No. 10-715

IN THE

Supreme Court of the United States

THOMAS LESLIE, LAURINE SPIVEY-FERGUSON, AND GRACE GARCIA,
Petitioners,

v.

CARVINAL CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether the Savings to Suitors Clause or 46 U.S.C. § 30509 abrogates the presumed validity of a federal forum-selection clause in a cruise passenger ticket contract?

2. Whether the presumed validity of a forum-selection clause in a passenger ticket contract applies where the designated forum is a federal court, resulting in a waiver of a state court forum and, to those falling only within the admiralty jurisdiction of the court, a potential waiver of their right to a jury trial?

CORPORATE DISCLOSURE STATEMENT

Respondent/Appellee "Carnival Corporation, d/b/a Carnival Cruise Lines, Inc." refers to itself as "Respondent" or "Carnival". Respondent refers to Petitioners/Appellants as "Petitioner(s)" or by their surnames. Respondent cites to Petitioners' "Petition for a Writ of Certiorari" as "*Pet. Brief* at ___".

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioners[1] filed their claims in the Eleventh Judicial Circuit Court of Florida[2], alleging they suffered personal injuries while traveling as passengers

[1] Petitioners Thomas Leslie and Kathryn Barry also filed suit in the United States District Court for the Southern District of Florida to preserve their claims from being time-barred in the event their state court actions were dismissed. Petitioner Kathrin Barry ultimately litigated her action in federal court without a jury, received a $869,543.19 award, and does not join Petitioners in this writ. *Barry v. Carnival Corp.*, No. 05-22549 (S.D. Fla. July 16, 2010).

[2] Florida Circuit Courts are the trial courts of original jurisdiction for most controversies. *See generally* FLA. STAT. § 26.012 (2010).

aboard Carnival cruise ships. Their claims are subject to passenger ticket contracts, all of which contain a forum-selection clause requiring that they bring suit, if at all, in the United States District Court for the Southern District Court of Florida. The pertinent language of the forum-selection clause provides as follows:

> 15. It is agreed by and between Guest and Carnival that all disputes and matters arising under, in connection with or incident to this Contract or the Guest's cruise, including travel to and from the vessel, shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A. to the exclusion of the Courts of any other county, state, or country.

The trial court enforced the forum-selection clause and dismissed the state court actions. Petitioners appealed to Florida's Third District Court of Appeal[3] (hereinafter "Third District"), challenging the validity of the forum-selection clause, contending that it violates the Savings to Suitors Clause, 28 U.S.C. § 1331(1), by preventing them from bringing their

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[3] Article V, section 1 of the Florida Constitution requires the Florida legislature to establish judicial circuits and appellate districts throughout the state. According to this constitutional mandate, the legislature has divided the state into twenty judicial circuits, created and defined in FLA. STAT. § 26.021 (2010), and five appellate districts, established by FLA. STAT. § 35.01 (2010). Each appellate district is comprised of a group of contiguous judicial circuits subject to the jurisdiction of a single district court of appeal.

suits in state court, and that – for those passengers subject only to the district court's admiralty jurisdiction – it results in a *sub silentio* waiver of their right to a trial by jury. The Third District upheld the validity of the clause. *See Leslie v. Carnival Corp.*, 22 So. 3d 561 (Fla. 3d DCA 2008) (termed "*Leslie I*" by Petitioners). Based on *Leslie I*, the Third District issued *per curiam* affirmances in *Garcia v. Carnival Corp.*, 22 So. 3d 567 (Fla. 3d DCA 2008) and *Spivey-Ferguson v. Carnival Corp.*, 22 So. 3d 566 (Fla. 3d DCA 2008). Thereafter, the Third District consolidated all four cases for purposes of rehearing *en banc*, which resulted in no decision due to an even split in the court and left the opinion in *Leslie I* standing. *See Leslie v. Carnival Corp.*, 22 So. 3d 567 (3d DCA 2009) (termed "*Leslie II*" by Petitioners). Concurrently, in *Spivey-Ferguson*, 22 So. 3d 566 (Fla. 3d DCA 2008), *rehearing denied and question certified* 22 So. 3d 567 (Fla. 3d DCA 2009), the Third District certified a question of great public importance to the Florida Supreme Court. In *Garcia v. Carnival Corp.*, No. 3D07-627 (Fla. 3d DCA Apr. 13, 2010) (order denying motion for certification), the Third District declined Petitioner Garcia's request to certify a question of great public importance to the Florida Supreme Court.

Petitioners sought consolidated review before the Florida Supreme Court. That Court declined to exercise its jurisdiction. *Leslie v. Carnival Corp.*, 44 So. 3d 1178 (Fla. Aug. 30, 2010). Petitioners now seek consolidated review before this Court.

ARGUMENT

I. PETITIONERS PRESENT NO COMPELLING REASON FOR REVIEW BY THIS COURT.

Petitioners neglect to specify the grounds upon which they seek this Court's jurisdiction. Petitioners do not present an "important" question of federal law that "should be" decided by this Court. S. Ct. R. 10(c). Nor do they assert conflict between opinions of state courts of last resort, United States courts of appeal, or with this Court. S. Ct. R. 10(b). Rather, they challenge the Third District's application of this Court's precedent that repeatedly enforces contractual forum-selection clauses and challenge the Third District's finding that the forum-selection clause does not violate its state's public policy. This challenge of purported misapplication of law does not warrant this Court's review. *See* S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of...the misapplication of a properly stated rule of law.")

A. The Third District's opinion is consistent with well-settled federal law that supports the enforcement of maritime forum-selection clauses.

The Third District, in its opinion below, followed two decisions from this Court, *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) ("The Bremen") and *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), in enforcing the validity of Carnival's forum-selection clause. In *The Bremen*, this Court "held that forum-selection clauses are prima facie valid and enforceable under the general maritime law." *Leslie I*, 22 So.3d at 563. It reasoned that ocean-faring

vessels travel through many different jurisdictions, thus potentially becoming subject to the laws of a particular jurisdiction by chance or accident, such that "[t]he elimination of all such uncertainties by agreeing in advance on a forum acceptable to both parties is an indispensable element in international trade, commerce, and contracting." *The Bremen*, 407 U.S. at 13-14.

The Third District followed this Court's reasoning, writing that "[t]o overcome the presumption that the forum-selection clause is enforceable, ... the party challenging the clause must make a 'strong showing' that the clause is unreasonable." *Leslie I,* 22 So.3d at 563. [internal citations omitted]. It found that Petitioners failed to make this "strong showing". *Id.* at 565-66. To the extent that Petitioners seek to instead shift the burden of presumption by requiring Carnival to prove the reasonableness of the clause, such argument inverts long-standing case law that presumes the validity of a forum-selection clause. *See The Bremen*, 407 U.S. 1; *Shute*, 499 U.S. 585; *see also Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528 (1995); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974).

Petitioners urge this Court's review on argument that the Third District misapplied *The Bremen* when it overlooked the "other language" that a forum-selection clause should be held unenforceable if enforcement would contravene a strong public policy in the forum in which suit is brought. This contention is not appropriate for this Court's certiorari review, because it invites this Court to assume the awkward role of reviewing a state court's finding that Carnival's forum-selection clause does

not violate that state's public policy.[4] In any event, the Third District correctly applied this Court's analysis in *The Bremen* to uphold the validity of Carnival's forum-selection clause:

> The argument that such clauses are improper because they tend to "oust" a court of jurisdiction is hardly more than a vestigial legal fiction. It appears to rest at core on historical judicial resistance to any attempt to reduce the power and business of a particular court and has little place in an era when all courts are overloaded and when businesses once essentially local now operate in world markets. It reflects something of a provincial attitude regarding the fairness of other tribunals.

Id. at 565 (quoting *The Bremen*, 407 U.S. at 12.)

To create an issue, Petitioners misconstrue the Third District's analysis of *The Bremen* by faulting the court for having "expressly acknowledge[d] the disruption to traditional maritime policy caused by Carnival's new forum selection clause," and "enforc[ing] it anyway." *Pet. Brief* at 12. This argument misconstrues the Third District's statement, which focused not on a sudden disruption to maritime law, but rather on the shift away from antiquated apprehen-

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[4] Petitioner Leslie, along with Ms. Barry, brought an action for declaratory relief in a second forum, the U.S. District Court for the Southern District of Florida, seeking a declaration holding the forum-selection clause invalid. District Judge Moore declined to grant the requested relief for lack of standing. *Barry v. Carnival Corp.*, No. 05-22551, 424 F. Supp. 2d 1354, 1357 (S.D. Fla. Mar. 29, 2006). That ruling was upheld on appeal. *Barry v. Carnival Corp.*, Nos. 06-12615, 06-13006, 257 Fed. Appx. 224 (11th Cir. Dec. 04, 2007).

sion toward enforcement of forum-selection clauses. *Leslie I,* 22 So.3d at 565.

By their ticket contracts, Petitioners agreed to submit their claims to a particular forum. This type of agreement is enforceable under *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). In *Shute*, this Court further "refine[d] the analysis of *The Bremen* to account for the realities of a form passage ticket contract," and held that a forum-selection clause in a form passenger cruise ticket contract, which was not subject to individual negotiation, was nonetheless enforceable and fundamentally fair. *Leslie I,* 22 So.3d at 563. The Third District followed *Shute* when it enforced as reasonable Petitioners' agreement to file their suits in federal district court:

> Although the reasoning in *Shute* is not dispositive of this case, we nevertheless are of the view that if a contractual provision requiring one of Carnival's Washington State passengers to travel to Florida to litigate her shipboard personal injury claim is valid, then, *a fortiori,* it is not contractually unreasonable for Carnival to require Barry and Leslie to travel from the Miami-Dade County Circuit Court to the United States District Court for the Southern District of Florida to present their personal injury claims against Carnival in this case.

Leslie I, 22 So.3d at 564.

Petitioners attempt to distinguish the forum-selection clause in *Shute* from the one here by arguing that the former is only a standard geographical forum-selection clause, while the latter is a *sovereign*-selection clause, which they contend deprives certain maritime passengers of their "historic option"

and right under the Savings to Suitors clause, 28 U.S.C. § 1331, to initiate their suits in state court and to remain there. That argument fails to account for the simple explanation that Petitioners chose not to pursue their right to initiate their actions in state court when they agreed to bring suit in the federal forum.

The Third District correctly analyzed the Savings to Suitors clause as reserving "to suitors the right of a common law remedy in all cases where the common law is competent to give it." *Leslie I,* 22 So.3d at 565 (citing *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), *superseded by statute on other grounds,* 45 U.S.C. § 59, *as recognized in Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990)). It "does no more than preserve the rights of maritime suitors to pursue nonmaritime remedies." *Poirrier v. Nicklos Drilling Co.*, 648 F.2d 1063, 1066 (5th Cir. 1981). It saves to suitors only a common law remedy; it does not guarantee the litigant a non-federal forum. *See id.* at 1066. The Savings to Suitors clause has long been construed to afford litigants a choice of remedies, not forums, and "it is not a remedy in the common-law courts which is saved, but a common-law remedy." *The Moses Taylor*, 71 U.S. 411, 431 (1866). In the *Leslie I* opinion, the Third District correctly analyzed the Savings to Suitors clause within its historic context and as interpreted by this Court in *Lewis v. Lewis & Clark Marine, Inc.* 531 U.S. 438, 445 (2001) (noting that the Savings to Suitors Clause originally "was inserted, probably, from abundant caution, lest the exclusive terms in which the power is conferred on the District Courts might be deemed to have taken away the concurrent remedy which had before existed" (quoting *N.J. Steam Navigation Co. v. Merchants' Bank of Boston,* 47 U.S. 344 (1848))).

Petitioners argue that the contractual forum-selection clause improperly federalizes maritime personal injury actions brought by passengers, but the state court below correctly rejected this argument; rather than destroying concurrent jurisdiction between state and federal courts for maritime personal injury claims in contravention to the Savings to Suitors clause, the forum-selection clause simply designates one of two potential forums, both of which would indeed otherwise have subject-matter jurisdiction in the absence of the contract. In effect, Petitioners' reasoning wrongly suggests that where there is concurrent jurisdiction, there should be a federal "public policy" prohibiting private parties who deal at arms-length from contractually agreeing to select a forum for dispute resolution.

Moreover, *Shute* undermines Petitioners' contention that the federal forum-selection clause violates 46 U.S.C. § 183(c) [recodified in 2006 under 46 U.S.C. § 30509][5], the Limitation of Vessel Owner's Liability Act:

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[5] 46 U.S.C.A. § 30509 provides, in relevant part, as follows:

> **(a) Prohibition.—**
>
> **(1) In general.**—The owner, master, manager, or agent of a vessel transporting passengers between ports in the United States, or between a port in the United States and a port in a foreign country, may not include in a regulation or contract a provision limiting—
>
> **(A)** the liability of the owner, master, or agent for personal injury or death caused by the negligence or fault of the owner or the owner's employees or agents; or
>
> **(B)** the right of a claimant for personal injury or death to a trial by court of competent jurisdiction.

> By its plain language, the forum-selection clause before us does not take away respondents' right to "a trial by [a] court of competent jurisdiction" and thereby contravene the explicit proscription of § 183c. Instead, the clause states specifically that actions arising out of the passage contract shall be brought "if at all," in a court "located in the State of Florida," which, plainly, is a "court of competent jurisdiction" within the meaning of the statute.

499 U.S. at 596. ("Because the clause before us allows for judicial resolution of claims against [Carnival] and does not purport to limit [Carnival's] liability for negligence, it does not violate 183c."). Nor does the Congressional testimony of Adele Springer, Esq., upon which Petitioners rely, support their contention that the federal forum-selection clause violates the public policy expressed in 46 U.S.C. § 30509. After all, "[i]t is only when passengers choose to bring their actions in admiralty that no right exists to trial by jury." Safety of Life and Property at Sea: Hearings before the House Committee on Merchant Marine and Fisheries: 74th Cong., 2nd Sess., pt. 4, pp. 109-110 (1936). Petitioners had that choice and by agreement chose to litigate, if at all, in federal district court.

Further, this Court should not grant review based on Petitioners' challenge that the forum-selection clause is unreasonable *per se* because it purportedly *sub silentio* waives the right of non-diversity suitors to a jury trial. Petitioners argue that the forum clause is unenforceable because it deprives non-diversity

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> **(2) Voidness.**—A provision described in paragraph (1) is void.

plaintiffs of their constitutional right to a jury trial without notice and without consent. However, the issue before this Court is not one regarding the validity of a jury trial waiver. Instead, it is the validity of a forum-selection clause that may result – depending on the residency of the passenger and amount in controversy – in the indirect loss of a jury trial by virtue of the procedures employed in an action brought under the admiralty jurisdiction of a district court. *See Waring v. Clarke*, 46 U.S. 441, 460 (1847) ("[W]e cannot see how [admiralty and maritime trials] are to be embraced in the [S]eventh [A]mendment of the [C]onstitution[.]"); *Curtis v. Loether*, 415 U.S. 189, 193 (1974) ("[T]he [Seventh] [A]mendment [should] be construed to embrace all suits which are not of equity and admiralty jurisdiction [.]")[6] Indeed, other types of clauses, which also incidentally surrender the right to jury trial, are routinely upheld. *See IFC Credit Corp. v. United Business & Indus. Federal Credit Union*, 512 F.3d 989 (7th Cir. 2008) (declining to follow decisions of the Second and Sixth Circuits that have held that agreements to resolve disputes by bench trials are enforceable only if extra evidence of negotiation or consent supports that clause). As articulated by the United States Court of Appeals for the Seventh Circuit,

> Consider an agreement to arbitrate, which surrenders not only a jury trial but also the right

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[6] Moreover, as it turned out, and as was recognized in *Leslie II*, Carnival consented to a jury trial pursuant to Rule 39(c). Plaintiff Barry waived an offered advisory jury trial anyway and proceeded with a bench trial. Petitioner Leslie's claim is still proceeding in U.S. district court. *See Leslie v. Carnival Corp.*, Case No. 05-22550 (S.D. Fla.).

> to any judicial forum. Courts do not impose special negotiation requirements on arbitration clauses in form contracts... So too with forum-selection clauses; parties may agree to a forum in another nation, where juries are unknown, but this does not make forum-selection clauses suspect. Even confession-of-judgment clauses in cognovit notes are enforceable...Agreement to a bench trial cannot logically be treated less favorably than agreement to confess judgment, or arbitrate, or litigate in a forum that will not use a jury. Many courts accordingly hold that an agreement to resolve a dispute in a bench trial is no less valid than the rest of the contract in which the clause appears."

Id. at 994. Furthermore, despite the care and protections afforded seamen due to their status as "the wards of admiralty," *see Atlantic Sounding Co., Inc. v. Townsend*, 129 S. Ct. 2561, 2570 (2009) and *Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO et. al. v. Mobil Oil Corp.*, 426 U.S. 407 (1976) (Powell, J., concurring), agreements to arbitrate, even in foreign lands, are regularly upheld in seamen's employment contracts. *See Bautista v. Star Cruises*, 396 F.3d 1289 (11th Cir. 2005); *Balen v. Holland America Line Inc.*, 583 F.3d 647 (9th Cir. 2009); *see also Rogers v. Star Cruises*, 547 F.3d 1148 (9th Cir. 2008); *Lobo v. Celebrity Cruises, Inc.*, 488 F.3d 891 (11th Cir. 2007); *Francisco v. STOLT ACHIEVEMENT MT*, 293 F.3d 270 (5th Cir. 2002). Moreover, outside the scope of admiralty law, precisely which specific factual determinations are triable by jury and under which circumstances often varies across state lines as well as between federal and state procedural rules. *See Georgia v. McCollum*, 505 U.S. 42 (1992) (citing *Minneapolis & St. Louis R.*

Co. v. Bombolis, 241 U.S. 211 (1916) for the proposition that "[s]tates do not have a constitutional obligation to provide a jury trial in civil cases"); *see also Stephen Landsman, The Civil Jury in America: Scenes from an Unappreciated History*, 44 HASTINGS L. J. 579 (1993); Fleming James, Jr., *Right to a Jury Trial in Civil Actions*, 72 YALE L. J. 655 (1963). It is therefore not a stretch to conclude that forum-selection clauses collaterally resulting in a loss of access to a jury in certain circumstances are routinely upheld without the requirement that a jury waiver be knowing and voluntary. Accordingly, Petitioners' strained argument that a forum-selection clause which operates to deprive cruise passengers of a jury trial in a narrow set of circumstances *only* if they knowingly and voluntarily waive a jury trial does not merit this Court's review.

B. Petitioners fail to show conflict with another state court of last resort, court of appeals, or for that matter, this Court.

Petitioners invite this Court to intervene and review the decisions below, lest the Savings to Suitors clause and "other applicable federal maritime law...be left up to parochial and conflicting decision-making by state courts only..." *Pet. Brief* at 32. Petitioners insinuate conflict by comparing *Leslie I* and *Oltman v. Holland America Line – USA*, 178 P.3d 981 (Wash. 2008) (Savings to Suitors clause confers no right to state court access) with *Nunez v. American Seafoods*, 52 P.3d 720 (Alaska 2002). *Nunez*, however, did not involve a forum-selection clause in a maritime *passenger ticket contract* such as the one here or in *Shute*. Instead, *Nunez* involved a forum-selection clause in a *seamen's employment contract*.

52 P.3d at 721. There, the Supreme Court of Alaska declined to enforce the federal forum-selection clause because the seaman plaintiff brought a Jones Act claim, which some courts have interpreted as incorporating provisions of the Federal Employer's Liability Act (FELA). The court in *Nunez* relied on *Boyd v. Grand Trunk Western Railroad Co.*, 338 U.S. 263 (1949)[7], in which this Court "expressly interpreted section 5 of the FELA to declare void any contract provision within the Act's coverage that limit's *an employee's* 'right to bring suit in any eligible forum.'" *Nunez*, 52 P.3d at 720. The Supreme Court of Alaska distinguished the rights conferred by the Jones Act in combination with the Savings to Suitors clause from those conferred by general maritime law and found *The Bremen* and *Shute* less instructive there. *Id.* at 721.

Oltman v. Holland America Line USA, Inc., 178 P.3d 981 (Wash. 2008), on the other hand, *did* involve a federal forum-selection clause in a passenger ticket contract, and the court there, like the Third District below, rejected the Savings to Suitors clause-based challenge. *See id.* at 994 ("While the savings to suitors clause allows for concurrent state and federal jurisdiction over admiralty matters, the Oltmans cite no authority that supports their claim that they were entitled to file in state court under the savings to suitors clause despite the forum-selection clause in the cruise contract. The forum-selection clause required them to file in federal court in the first

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[7] Petitioners also cite to *Boyd*, arguing that this Court's reasoning in that case requires the federal forum-selection clause here to be found void. Petitioners fail to explain why this Court's analysis in a decision that relied on the statutory forum eligibility provision in FELA is relevant here.

instance.") The same reasoning applies here. Nothing in the Savings to Suitors clause prevents parties from preemptively agreeing to a specified forum.

Petitioners overstate the purported conflict among state-level decisions that have determined the enforceability of a federal forum-selection clause in a maritime passenger ticket. In fact, *Oltman*, the only other state supreme court decision cited by Petitioners that actually involves a forum clause in a passenger ticket contract, resolved the issue in alignment with the Florida state court below. *Oltman*, 178 P.3d at 994.

Thus, there is no conflict between the opinion below and federal law, including precedent from this Court, or the decisions of other state courts of last resort. Accordingly, this Court should decline review of the decisions below.

II. *LESLIE* WAS DISMISSED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

This Court has long held that it will not consider an issue of federal law on direct review from a judgment of a state court if the state court's judgment rests on a state-law ground that is both independent of the merits of the federal claim and an adequate basis for the court's decision. *See Lambrix v. Singletary*, 520 U.S. 518 (1997); *Bell v. State of Md.*, 378 U.S. 226 (1964). This Court's power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights; the power is to correct wrong judgments, not to revise opinions taking erroneous views of federal law. *See Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977). Where a state court decision rests upon an

adequate and independent state ground, the state ground controls the result in the case, no matter what this Court may say about the merits of the federal issue. *Id.* In such a case, anything which this Court could say on the federal issue would merely be an advisory opinion, and this Court has oft stated that it does not have jurisdiction to render an advisory opinion under such circumstances, *see Paschall v. Christie-Stewart, Inc.*, 414 U.S. 100 (1973), or to correct statements in state court opinions which do not affect the final outcome of a case, *see Black v. Cutter Laboratories*, 351 U.S. 120 (1945), even though a state court's opinion may reflect an erroneous view of federal law. *See Radio Station WOW v. Johnson*, 326 U.S. 120 (1945).

Here, although the Third District relied primarily on federal general maritime law for its analysis, its holding affirmed a state court decision that declined subject-matter jurisdiction in deference to a contractual forum-selection clause. Petitioners' reliance on *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 363, 370-71 (1959) ("Except in diversity cases, maritime litigation brought in state courts [cannot] be removed to the federal courts" because "making maritime cases removable to the federal courts...would make considerable inroads into the traditionally exercised concurrent jurisdiction of state courts in admiralty matters...a jurisdiction which it was the unquestioned aim of the saving clause of 1789 to preserve") is therefore misplaced. Unlike in *Romero*, the facts of this case do not involve a removal pursuant to 28 USC § 1441. Rather, the state court simply declined to hear the case on subject-matter jurisdiction grounds due to an agreed-to forum-selection clause. This distinction was recognized in *Assiff v. Carnival Corp.*, 930 So.2d 776

(Fla. 3d DCA 2006), another Florida case that upheld the very same forum-selection clause at issue. In *Assiff*, the Third District disagreed that removability was relevant:

> 28 U.S.C. § 1441 allows for the removal of a case from a state court to a federal court under specific circumstances, which we find are not present in this case...since there is no statutory mechanism to remove or transfer this matter to federal court, the trial court properly dismissed the complaint.

Id. at 778. The Third District in this case explicitly noted that its decision to uphold the contractual forum-selection clause was reinforced by its earlier decisions in *Assiff* as well as *Carnival Corp. v. Middleton*, 941 So. 2d 421 (Fla. 3d DCA 2006). This Court should not interfere with the state court's dismissal of a case brought before it in contravention to a forum-selection clause that properly designated the U.S. District Court, a court with concurrent jurisdiction, as the exclusive forum. Notwithstanding Petitioners' pleas that "*somewhere*, there has to be a public policy force field that such clauses may not cross" (emphasis in original), as the Third District correctly objected, "it is oxymoronic under our federal system of government to think that the United States Congress has the power to command a state court to exercise its jurisdiction to do anything." *Leslie II*, 22 So. 3d 567 (Shepherd, J., concurring); *see also Howlett By and Through Howlett v. Rose*, 496 U.S. 356 (1990); *Herb v. Pitcairn*, 324 U.S. 117 (1945). This is particularly true where Petitioners have failed to exhaust their remedies in federal court, where Petitioner Leslie's action remains pending.

CONCLUSION

Petitioners have offered no compelling reasons why this Court should take up this case. The court below faithfully adhered to well established federal case law and the overwhelming federal policy that favors the enforcement of maritime forum-selection clauses. The Third District opinion is consistent with those rendered by this and other federal courts as well as other state courts of last resort. Further, the Third District opinion below rests upon adequate and independent state grounds. Therefore, Petitioners have offered no convincing reason – and there is no convincing reason – for this Court to grant their Petition.

WHEREFORE, Respondent, Carnival Corporation, respectfully requests that Petitioners' request for a writ of certiorari be denied.

Respectfully submitted,

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